

In the Court of Appeals of the State of Alaska

Estate of Andrew J. Dayton,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13466**

Order

Date of Order: **September 15, 2021**

Trial Court Case No. **4FA-98-02438CR**

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges

Andrew J. Dayton pleaded guilty, pursuant to a plea agreement, to second-degree failure to register as a sex offender. He also admitted, in the same hearing, to violating his conditions of probation.

Dayton then filed an appeal, but he did so solely in his probation case — case number 4FA-98-02438 CR. On appeal, he argues that his guilty plea and admission were taken in violation of due process because the superior court did not specifically advise him that his guilty plea and admission could be relied on by the parole board to revoke his parole.

During the pendency of his appeal, Dayton passed away. This Court issued an order asking Dayton's counsel to indicate whether Dayton's estate intended to pursue the appeal. Dayton's attorney subsequently filed a notice with the Court stating that the estate wished to proceed with the appeal, and the Court granted the request to substitute the estate as the appellant.

Upon further review, however, this appeal appears to be moot.

In *State v. Carlin*, the Alaska Supreme Court held that, when a criminal defendant dies during the pendency of his direct appeal, the estate may substitute in as a party and continue with the appeal.¹ If the estate does not substitute in for the defendant, the conviction remains intact.²

But Dayton did not appeal the judgment in his new criminal case, 4FA-18-02411 CR. Thus, even if we agreed with Dayton's arguments, we would have no authority to vacate the judgment in that case because it is not before us.

Dayton did appeal the judgment in his probation case. But although that judgment is before us, even if we agreed with Dayton's arguments, there is seemingly no meaningful relief that we could grant to Dayton. The judgment in his new criminal case would still establish that he had violated his probation. And in any event, vacating his probation violation would have no effect on his underlying conviction in that case.

Accordingly, **IT IS ORDERED:**

1. Dayton's estate is invited to file a pleading explaining why this appeal is not moot and remains a live controversy. The pleading, if any, shall be filed on or before September 27, 2021.

2. If Dayton files a pleading, the State shall have 10 days from the date of that pleading to file a response.

¹ *State v. Carlin*, 249 P.3d 752 (Alaska 2011).


² *Id.* at 754.

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3. If Dayton does not file a pleading, the Court intends to dismiss this appeal.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Carly Williams, Deputy Clerk

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